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FM AMEMBASSY KUALA LUMPUR
TO RUEHC/SECSTATE WASHDC IMMEDIATE 3215
INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RUEHBY/AMEMBASSY CANBERRA PRIORITY 2821

C O N F I D E N T I A L SECTION 01 OF 04 KUALA LUMPUR 000775

SIPDIS

E.O. 12958: DECL: 09/18/2029

TAGS: [KTIP](#) [KCRM](#) [KWMN](#) [PHUM](#) [PREL](#) [SMIG](#) [MY](#) [PGOV](#)

SUBJECT: TIP AMBASSADOR CDEBACA'S VISIT TO MALAYSIA, AUGUST 25-27

Classified By: DCM Robert Rapson for reasons 1.4 b and d.

Summary

1.(U) SUMMARY: Ambassador Luis CdeBaca, Director, Office to Monitor and Combat Trafficking in Persons (TIP), met with the Foreign Minister, the Attorney General's Office, the Minister for Women's Affairs and other senior GOM officials during his August 25-27 visit to review Malaysia's Tier 3 ranking and its recent efforts to address concerns laid out in the US Action Plan. He also met the local UNHCR Director, several NGOs, and visited a shelter for female victims of TIP and concluded his visit with a press roundtable. Throughout his meetings, Ambassador CdeBaca stressed that TIP is a global problem and he welcomed opportunities for the United States and Malaysia work together in combating this form of modern-day slavery. GOM officials explained the recent arrest of five immigration officials in connection with the trafficking of Burmese refugees at the Thai border; that the TIP Council would be releasing a TIP Action Plan on or about September 15; the recent issuance of prosecutorial directives on the handling of TIP cases by the Attorney General's Chambers (AG); the Ministry of Human Resource's ongoing construction of a SOP regarding how labor cases are to be referred to police and prosecutors; and that a new MOU with Indonesia would be announced shortly and would drop any provisions for employers to hold migrant workers' passports. END SUMMARY.

FOREIGN MINISTER CITES PRIME MINISTER'S EMPHASIS ON TIP

12. (U) In his August 27 meeting with Malaysian Foreign Minister Anifah Aman, as during his other Kuala Lumpur meetings, Ambassador CdeBaca praised the GOM for its efforts in recent months to enforce its 2007 anti-TIP law, noted that further efforts on labor trafficking and victim protection were called for and suggested increased USG-GOM cooperation and cross-training to enhance prosecution efforts and prevent trafficking.

13. (C) Foreign Minister Anifah Aman explained that Prime Minister Najib had directed all relevant ministries to make combating TIP a priority. FM Anifah noted that Malaysia's placement on Tier 3 of the 2009 TIP Report was "the least of (his) concerns," and that the GOM's actions were not to prove themselves to another country but done simply because "it is the right thing to do." He reiterated his Ministry's commitment and that of the GOM to continue the fight against trafficking in partnership with the US. In response to Ambassador CdeBaca's request for a public statement expressing the GOM's commitment to fighting trafficking, the FM stated that he thought such a statement could be made.

14. (C) In a follow-on meeting with Ambassador CdeBaca, MFA Deputy Secretary General Zainol Omar stressed the importance of addressing trafficking regionally, suggesting that ASEAN countries should "start small" by exchanging information and

intelligence.

MEETING WITH THE ACTING HEAD OF PROSECUTIONS

15. (C) In a one-hour meeting at the Attorney General's Office on August 26, Ambassador CdeBaca engaged in an extensive discussion with the Acting Head of Prosecution Tuan Abdul Wahab Mohammad and two senior prosecutors on how to best handle the prosecution of TIP related cases. Wahab and his colleagues explained recent steps taken by the AG to ensure that the anti-TIP law was used when appropriate. They noted that the AG, moving very quickly, issued national directives in July stipulating that (1) any case involving a foreign national would be considered under the anti-TIP law in the first instance, rather than under the immigration or labor laws (issued July 23), and (2) that any such case be reported to the Attorney General's office in Kuala Lumpur, rather than handled locally (issued July 29).

16. (C) Wahab confirmed the arrest of five immigration officials in connection with the trafficking of Burmese refugees at the Thai border as well as the current charging of one of these individuals. When asked how enforcement agencies around Malaysia were learning about and enforcing the anti-TIP law, Wahab and colleagues noted that officers in four enforcement agencies could make trafficking arrests: Police, Immigration, Customs and the new Maritime Enforcement Agency.

17. (SBU) Wahab also provided a statistical summary of cases under Malaysia's 2007 Anti-Trafficking in Persons Act since

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it was put into effect in early 2008: out of 51 total cases since then, 47 related to sex trafficking while four related to labor trafficking; four cases had resulted in convictions, 46 were pending, and one had been dismissed when a key witness refused to testify; the cases covered 38 accused persons and involved 73 victims.

18. (C) Wahab and his colleagues explained GOM efforts to enforce the 2007 Trafficking in Persons law, emphasizing the difficulties involved in successfully prosecuting cases. One issue identified was that victims were held in shelters for a maximum of 90 days after which they would be deported. During this 90-day period, the prosecutors had to record their statements for later use in trials. Victims, traumatized and focused on returning to their home countries, were reluctant to testify. Ambassador CdeBaca explained that U.S. prosecutors, facing the same issues, had developed a system under which victims were sheltered for as long as was needed for them to develop a trusting relationship with police and prosecutors, and so that they could testify in person in trials. Wahab and colleagues expressed interest in learning more about how the U.S. justice system prosecuted trafficking cases. This comment was followed by a discussion of planned future training by the U.S. Department of Justice, Overseas Prosecutorial Development, Assistance, and Training (USDJ/OPDAT) tentatively scheduled for October or November of 2009 in Malaysia as well as the potential for follow-on training in the United States.

MEETING WITH THE HOME MINISTRY

19. (SBU) Senior Deputy Secretary General of the Home Ministry Raja Azhar explained that the TIP Council is supervised by the Home Ministry and consists of three committees: a Legal Committee headed by the Attorney General's Chambers, a Care and Protection Committee run by the Ministry of Women, Family, and Community Development, and an Enforcement Committee consisting of the Royal Malaysian Police, Immigration, and Malaysian Maritime Enforcement Agency. (Note: The GOM has subsequently added two committees to be run by the Human Resource Ministry: a Media and Publicity

Committee and a Committee to Study Labor Trafficking Issues.
End Note).

¶10. (C) Raja further explained to Ambassador CdeBaca that Malaysia's interagency TIP Council would publish the GOM's TIP action plan on or about September 15. The plan would outline an SOP for handling TIP cases and incorporate the AG's two recent directives (see para. 5). The plan would also direct TIP training to be included in police and legal training curricula by 2010. It also called for the opening of approximately six new shelters for TIP victims including a 300-person shelter for male victims of trafficking near the Kuala Lumpur International Airport. Azhar noted that they wouldn't be able to share the full text of the draft plan with us until after the Council had approved it, but he did read excerpts from the section that dealt with labor trafficking issues. (Note: In a meeting on September 11, Muhd Khair Razman Bin Mohamed Annuar, Deputy Undersecretary for the Home Ministry informed PolOff that the release of the plan would be delayed by one to two months. End Note.)

¶11. (C) Azhar discussed Malaysia's declarative agreement with the Government of Indonesia regarding a new migrant workers' MOU to be announced shortly. Motivated in large part by domestic political pressure, the governments have constructed a new MOU directed at protecting the rights of maids and other migrant workers. Specific to beefing up their anti-trafficking efforts, the GOM has removed language contained in its previous MOU that gave employers the right to confiscate migrant workers' passports. Moreover, the MOU mandates that employers pay migrant employees by depositing their paychecks into a bank account in the migrant's name. By doing so, the GOM is able to monitor whether employers are complying with the agreement and pursue remedies for the migrant workers if they fail to do so. The MOU also calls for one day off a week for migrant workers as well as a standard minimum wage.

¶12. (C) Azhar explained GOM plans to reduce the number of migrant recruiting agencies. He acknowledged that many workers are currently being brought into Malaysia but are not matching up with jobs thereby contributing to the numbers of individuals in Malaysia vulnerable to trafficking. The GOM intends to investigate such companies and be stricter on the issuing of permits needed to run such companies and envision cutting the number from a current level of 277 to 110.

¶13. (C) Raja Azhar explained that the GOM had a short window of opportunity (until March 2010) to make amendments to its

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anti-TIP law without extensive parliamentary review. Ambassador CdeBaca informed the Home Ministry that he had suggestions for improving their anti-TIP law that he would forward to their attention. In response to their expressed willingness to look at US caselaw on TIP, Ambassador CdeBaca explained that he would also forward leading US cases on TIP and slavery.

MEETING WITH THE HUMAN RESOURCES MINISTRY

¶14. (C) Deputy Minister of Human Resources Datuk Maznah Mazlan, accompanied by several of her top deputies, told Ambassador CdeBaca that many of the USG's concerns regarding how TIP matters would be handled would be addressed in the TIP Council's Action Plan to be approved in mid-September. In response to Ambassador CdeBaca's suggestion that the GOM consider allowing TIP victims in shelters to receive job training, the Deputy Minister said they would consider this.

¶15. (C) The Deputy Minister reviewed provisions to amend the 1955 Employment act that would improve the handling of labor trafficking cases. She brought out the draft text for the Ministry's SOP for implementing the amended law. She also discussed GOM plans for cracking down on and reducing the

number of labor recruitment agencies operating in Malaysia, and the standardization of labor contracts in an effort to protect migrant workers.

MEETING WITH THE WOMEN,S MINISTER

¶16. (C) Minister for Women, Family, and Community Development Datuk Seri Shahrizat Adbul Jalil began the August 27 meeting with Ambassador CdeBaca and Ambassador Keith by raising concerns about Malaysia's recent placement on Tier 3 and asking for clarification as to what types of actions qualify countries for Tiers 1 and 2. The Minister stated that as a country, Malaysia could not condone TIP and expressed her Ministry's firm commitment to working both "hard and smart" with the US to combat TIP. She noted that she was open to suggestions and looked forward to learning from the US on how to better combat TIP. The Minister indicated the GOM would need to give further study to Ambassador CdeBaca's suggestion that better convictions would arise if victims were allowed to remain in Malaysia for longer and not be kept in detention. She suggested that such a move would represent a major change in how the GOM administers its trafficking victim programs, but said that nonetheless her Ministry would give the proposal consideration.

NGO ROUND TABLE, UNHCR AND THE AUSSIES

¶17. (C) At a roundtable discussion with leading NGOs hosted by Ambassador Keith, Tenaganita founder and Director Irene Fernandez stressed the need to address labor trafficking, saying that outsourcing of workers from Bangladesh, Nepal, Vietnam and other countries sometimes led to labor trafficking situations. Aegile Fernandez, TIP coordinator for Tenaganita, added that the estimated 500,000 domestic servants from abroad in Malaysia often worked excessive hours with no days off. The NGOs focused their comments largely on individual issues and cases each was working on and not on GOM actions per se. They emphasized: (1) that the Tier 3 ranking was effectively motivating the GOM to act; (2) that the USG should keep pressure on the GOM; and (3) the USG should apply pressure to US corporations that subcontract work to companies in Malaysia with questionable labor practices.

¶18. (C) Ambassador CdeBaca also met briefly with Australian Ambassador for People Smuggling, Peter Woolcott, who was in Kuala Lumpur with a senior Australian delegation for high-level talks with the GOM on Australia,s priority issue of people smuggling. Woolcott and Ambassador Cdebaca exchanged notes on their respective interactions with the Malaysians. Woolcott expressed a desire to work with the US on law enforcement training projects on TIP both globally and in the region, although emphasizing that Australia,s priority was on addressing people smuggling.

¶19. (C) Alan Vernon, Director of UNHCR Malaysia, explained over lunch with Ambassador Cdebaca that he felt that many of the GOM's TIP problems arose out of their immigration practices)- allowing loose borders with no real path to citizenship for immigrants. This gave rise to a permanent undocumented lower class that could be exploited by traffickers. However, Vernon noted that there have been significant changes since the 2009 Tip Report had been published and remarked that trafficking of people to the Thai

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border had effectively come to a halt based on UNHCR,s informal surveys of Burmese refugees in Malaysia. He also said that UNHCR's ability to contact and register refugees had greatly improved in recent months.

¶20. (U) The GTIP delegation cleared this cable.
KEITH